IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6833 OF 2005

Prashant Khuse and Anr. .. Applicants

Versus

State of Maharashtra .. Respondent

Mr.A.P.Mundergi, Senior Advocate with Mr.Ganesh Gole for applicants

Mrs.Shinde, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th November 2005.

P.C.

. Heard Mr.Mundergi, learned Senior Counsel for the applicants and Mrs.Shinde, A.P.P. for

State. Perused the orders passed by the sessions court in bail application No.1417 of 2005 and 1485 of 2005 on 29th June 2005 and 11th July 2005. Also perused the order passed by the sessions court in the same applications on 5th October 2005.

2. It appears from the record that by two orders on 29th June 2005 and 11th July 2005, although arguments were advanced on merits of the matter, learned Judge directed the applicants to show their bonafides and pay to the bank in question some amount. In the opinion of the learned sessions judge, the transaction was for Rs.46,12,500/- and the bills of exchange resulted in wrongful gain by the applicants.

3. Therefore, opportunity was given to deposit some amount. Thereafter, the bail applications of applicants herein were heard together with bail application No.1780 of 2005

which was preferred by other accused who was at the relevant time Manager of the bank. As far as present applicants are concerned, it appears that the learned sessions Judge has been greatly influenced by the fact that the amount withdrawn is Rs.48,12,500/- and earlier opportunity to show bonafide having not been availed of, the applicants are not entitled to bail.

4. Similarly, the learned Judge was also influenced by the fact of applicants being white collared criminals.

5. In my view, interest of justice would be served if the learned sessions judge is directed to hear the applicants in Bail Applications No.1417 of 2005 and 1485 of 2005 afresh. These applications be decided on their own merits and in accordance with law uninfluenced by the fact that applicants could not arrange to deposit a substantial sum. I am informed by learned

Counsel appearing for parties that an amount of Rs.5 lakhs has been deposited by applicants herein with the bank. However, it is well settled that bail applications cannot be disposed of either on the assurance of compromise or merely on the basis that monies have been deposited. Bail applications have to be decided on the touch stone of well settled principles laid down by the Supreme Court. Therefore, it will be in the fitness of things if the applicants are given one more opportunity to apply for bail and their applications are considered by learned Sessions Judge uninfluenced by the order dated 5th October 2005 or earlier orders. Learned Judge also shall not be influenced by the fact that his order has been set aside by this Court.

5. Learned Judge is directed to dispose of these bail applications by 24th November 2005.

(S.C.DHARMADHIKARI, J)